

OLL85-1583/1

7 June 1985

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MEMORANDUM FOR:

[redacted]  
Chief, Information & Privacy  
Office of Information Service

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[redacted]  
Assistant General Counsel  
Litigation Division, Office of General Counsel

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FROM:

[redacted]  
Legislation Division  
Office of Legislative Liaison

SUBJECT:

Data Protection Act of 1985

1. The Office of Management and Budget has requested our views on a draft DOJ report commenting on H.R. 1721, the Data Protection Act of 1985. The bill, which was introduced by Congressman Glenn English, would create a Government Data Protection Board with broad powers and responsibilities regarding the requirements and administration of the Privacy Act. The Board would be responsible for developing guidelines for implementation of the Privacy Act, investigating compliance by all federal agencies with the requirements of that Act, and generally formulating policy in the Privacy area.

2. The Justice Department has taken a strong stand against this legislation. I concur with the Department's position taken in this matter. A copy of their report on the bill, as well as a copy of the bill itself, is included for your review. OMB has requested that we respond with our views by June 17. I would therefore appreciate your views, if any, on or before June 14.

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Attachments  
as stated

[redacted]

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02 MAY 1985

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99TH CONGRESS  
1ST SESSION

# H. R. 1721

To establish a Data Protection Board, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 1985

Mr. ENGLISH introduced the following bill; which was referred to the Committee on Government Operations

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## A BILL

To establish a Data Protection Board, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That this Act may be cited as the "Data Protection Act of  
4 1985".

5 SEC. 2. Section 5 of the Privacy Act of 1974 is amend-  
6 ed to read as follows:

7 "SEC. 5. (a) ESTABLISHMENT OF BOARD.—(1) There  
8 is established as an independent agency of the executive  
9 branch of the Government the Data Protection Board.  
10 "(2)(A) The Board shall be composed of three members  
11 who shall be appointed by the President, by and with the  
12 advice and consent of the Senate, from among members of

1 the public at large who are well qualified for service on the  
2 Board by reason of their knowledge and expertise in any of  
3 the following areas: civil rights and liberties; law; social sci-  
4 ences; computer technology; business; and State and local  
5 government. Not more than two of the members of the Board  
6 shall be adherents of the same political party.

7       “(B) One of the members of the Board shall be designat-  
8 ed Chairman by the President.

9       “(3) The Chairman shall preside at all meetings of the  
10 Board, but the Chairman may designate another member as  
11 an acting Chairman who may preside in the absence of the  
12 Chairman. A quorum for the transaction of business shall  
13 consist of at least two members present, except that one  
14 member may conduct hearings and take testimony if author-  
15 ized by the Board. Each member of the Board, including the  
16 Chairman, shall have equal responsibility and authority in all  
17 decisions and actions of the Board, shall have full access to  
18 all information relating to the performance of his duties or  
19 responsibilities, and shall have one vote. Action of the Board  
20 shall be determined by a majority vote of the members  
21 present. The Chairman (or Acting Chairman) shall see to the  
22 faithful execution of the policies and decisions of the Board,  
23 and shall report thereon to the Board from time to time or as  
24 the Board may direct.

1       “(4) Members of the Board shall serve for terms of  
2 seven years, except that a member may continue to so serve  
3 until a successor takes office. Members shall be eligible for  
4 reappointment for a single additional term. Vacancies in the  
5 membership of the Board shall be filled in the same manner  
6 in which the original appointment was made.

7       “(5) Vacancies in the membership of the Board, as long  
8 as there are two members in office, shall not impair the  
9 power of the Board to execute the functions and powers of  
10 the Board.

11       “(6) The members of the Board shall not engage in any  
12 other employment during their tenure as members of the  
13 Board.

14       “(7)(A) Whenever the Board submits any budget esti-  
15 mate or request to the President or the Office of Management  
16 and Budget, it shall concurrently transmit a copy of that re-  
17 quest to the Congress.

18       “(B) Whenever the Board submits any legislative rec-  
19 ommendations, or testimony, or comments on legislation to  
20 the President or Office of Management and Budget, it shall  
21 concurrently transmit a copy thereof to the Congress. No of-  
22 ficer or agency of the United States shall have any authority  
23 to require the Board to submit its legislative recommenda-  
24 tions, or testimony, or comments on legislation, to any officer  
25 or agency of the United States for approval, comments, or

1 review, prior to the submission of such recommendations, testimony, or comments to the Congress.

3       “(b) PERSONNEL OF THE BOARD.—(1)(A) The Board  
4 shall appoint an Executive Director and a General Counsel  
5 who shall perform such duties as the Board may determine.  
6 Such appointment may be made without regard to the provisions  
7 of title 5, United States Code.

8       “(B) The Executive Director and the General Counsel  
9 shall each be compensated at a rate not in excess of maximum  
10 rate for GS-18 of the General Schedule under section  
11 5332 of title 5, United States Code.

12       “(2) The Board is authorized to appoint and fix the compensation  
13 of not more than 30 officers and employees (or the  
14 full-time equivalent thereof), and to prescribe their functions  
15 and duties.

16       “(3) The Board may obtain the services of experts and  
17 consultants in accordance with the provisions of section 3109  
18 of title 5, United States Code.

19       “(c) FUNCTIONS OF THE BOARD.—(1) The Board  
20 shall—

21               “(A) develop guidelines and model regulations for  
22 the use of Federal agencies in implementing the provisions  
23 of section 552a of title 5, United States Code;

1           “(B) develop guidelines for the use of Federal  
2 agencies and State and local agencies in implementing  
3 the provisions of section 7 of this Act;

4           “(C) provide continuing assistance to Federal  
5 agencies in implementing section 552a of title 5,  
6 United States Code;

7           “(D) publish on a regular basis a guide to the use  
8 of section 552a of title 5, United States Code, and a  
9 compilation of agency system of records notices, to-  
10 gether with an index (or other finding aids); and

11           “(E) investigate compliance with section 552a of  
12 title 5, United States Code, and report on any violation  
13 of any provision thereof (or of any regulation promul-  
14 gated under such section) to the President, the Attor-  
15 ney General, and the Congress.

16           “(2) The Board may—

17           “(A) issue advisory opinions with respect to sec-  
18 tion 552a of title 5, United States Code, at the request  
19 of Federal agencies, a court, the Congress, or any  
20 other person;

21           “(B) intervene in an agency proceeding on behalf  
22 of a person whose rights under section 552a of title 5,  
23 United States Code, may have been violated;

24           “(C) file comments on any proposal (i) to amend  
25 section 552a of title 5, United States Code, or any



1 regulation promulgated under such section, (ii) to  
2 create or modify a system of records, or (iii) to estab-  
3 lish or alter routine uses of such a system;

4 “(D) with the approval of the court, file a brief or  
5 otherwise intervene in any action or proceeding under  
6 section 552a of title 5, United States Code;

7 “(E) order an agency to stay, for not more than  
8 ninety days, a proceeding to establish or modify (i) a  
9 notice of a system of records, (ii) a routine use, (iii) an  
10 exemption, or (iv) any other regulation promulgated  
11 under section 552a of title 5, United States Code;

12 “(F) review Federal laws, Executive orders, regu-  
13 lations, directives, and judicial decisions and report on  
14 the extent to which they are consistent with the rights  
15 of privacy, due process of law, and other guarantees in  
16 the Constitution;

17 “(G) at the request of a State or local government  
18 or Federal agency, provide issues relating to data pro-  
19 tection;

20 “(H) comment on the implications for data protec-  
21 tion of proposed Federal, State, or local statutes, regu-  
22 lations, or procedures;

23 “(I) propose legislation to improve data protec-  
24 tion;

1           “(J) accept and investigate complaints about vio-  
2           lations of data protection standards and rights;

3           “(K) intervene as a party or otherwise participate  
4           in any formal or informal Federal administrative pro-  
5           ceeding or process where, in the judgment of the  
6           Board, the action being considered would have a mate-  
7           rial effect on data protection, either as the result of  
8           direct government action or as a result of government  
9           regulation of others; and

10          “(L) petition a Federal agency to take action on a  
11          matter affecting data protection rights.

12          “(3) In addition, the Board may—

13               “(A) conduct, assist, or support research, studies,  
14               and investigations on the collection, maintenance, use,  
15               or dissemination of personal information; implications  
16               for the protection of personal privacy of computer,  
17               communications, and other technology; and any other  
18               areas relating to data protection;

19               “(B) assist in the development or implementation  
20               of policies designed to increase the protection of per-  
21               sonal information maintained by the private sector;

22               “(C) assist United States companies doing busi-  
23               ness abroad to comply with foreign data protection  
24               laws;

1           “(D) assist in the coordination of United States  
2           data protection policies with data protection policies of  
3           foreign countries;

4           “(E) accept and investigate inquiries from foreign  
5           nationals or governments with respect to data protec-  
6           tion issues; and

7           “(F) cooperate and consult with privacy or data  
8           protection commissions or agencies of foreign  
9           governments.

10          “(d) CONFIDENTIALITY OF INFORMATION.—(1) Each  
11          department, agency, and instrumentality of the executive  
12          branch of the Government, including each independent  
13          agency, shall furnish to the Board, upon request made by the  
14          Chairman, such data, reports, and other information as the  
15          Board deems necessary to carry out its functions under this  
16          Act.

17          “(2) In carrying out its functions and exercising its  
18          powers under this Act, the Board may accept from any Fed-  
19          eral agency or other person any identifiable personal data if  
20          such data is necessary to carry out such powers and func-  
21          tions. In any case in which the Board accepts any such infor-  
22          mation, it shall provide appropriate safeguards to insure that  
23          the confidentiality of such information is maintained and that  
24          upon completion of the purpose for which such information is

1 required it is destroyed or returned to the agency or person  
2 from which it is obtained, as appropriate.

3       “(e) POWERS OF THE BOARD.—(1)(A) The Board may,  
4 in carrying out its functions under this Act, conduct such  
5 inspections, sit and act at such times and places, hold such  
6 hearings, take such testimony, require by subpoena the attend-  
7 ance of such witnesses and the production of such books,  
8 records, papers, correspondence, and documents, administer  
9 such oaths, have such printing and binding done, and make  
10 such expenditures as the Board deems advisable. A subpoena  
11 shall be issued only upon an affirmative vote of a majority of  
12 all members of the Board. Subpoenas shall be issued under the  
13 signature of the Chairman or any member of the Board desig-  
14 nated by the Chairman and shall be served by any person  
15 designated by the Chairman or any such member. Any  
16 member of the Board may administer oaths or affirmations to  
17 witnesses appearing before the Board.

18       “(B) In case of disobedience to a subpoena issued under  
19 subparagraph (A) of this subsection, the Board may invoke  
20 the aid of any district court of the United States in requiring  
21 compliance with such subpoena. Any district court of the  
22 United States within the jurisdiction where such person is  
23 found or transacts business may, in case of contumacy or  
24 refusal to obey a subpoena issued by the Board, issue an order  
25 requiring such person to appear and testify, to produce such

1 books, records, papers, correspondence, and documents, and  
2 any failure to obey the order of the court shall be punished by  
3 the court as a contempt thereof.

4 “(C) Appearances by the Board under this Act shall be  
5 in its own name. The Board shall be represented by attorneys  
6 designated by it.

7 “(2) The Board may delegate any of its functions to  
8 such officers and employees of the Board as the Board may  
9 designate and may authorize such successive redelegations of  
10 such functions as it may deem desirable.

11 “(3) In order to carry out the provisions of this Act, the  
12 Board is authorized—

13 “(A) to adopt, amend, and repeal rules and regu-  
14 lations governing the manner of its operations, organi-  
15 zation, and personnel;

16 “(B) to enter into contracts or other arrangements  
17 with any State or local government, any agency or de-  
18 partment of the United States, or with any person,  
19 firm, association, or corporation, and such contracts or  
20 other arrangements, or modifications thereof, may be  
21 entered into without legal consideration, without per-  
22 formance or other bonds, and without regard to section  
23 3709 of the Revised Statutes, as amended (41 U.S.C.  
24 5);

1           “(C) to make advance, progress, and other pay-  
2       ments which the Board deems necessary under this  
3       Act without regard to the provisions of section 3648 of  
4       the Revised Statutes, as amended (31 U.S.C. 529);

5           “(D) to establish advisory committees in accord-  
6       ance with the Federal Advisory Committee Act (5  
7       U.S.C. App.); and

8           “(E) to take such other action as may be neces-  
9       sary to carry out the provisions of this Act.

10       “(f) REPORTS AND INFORMATION.—(1) The Board  
11       shall, from time to time, and in an annual report, report to  
12       the President and the Congress on its activities in carrying  
13       out the provisions of this Act.

14       “(2) Not later than two years after the date of enact-  
15       ment of the Data Protection Act of 1985, the Board shall  
16       submit to the President and the Congress a legislative pro-  
17       posal to remove inconsistencies in laws and practices involv-  
18       ing privacy, confidentiality, and disclosure of information.

19       “(3) The Board shall undertake whatever efforts it may  
20       determine to be necessary or appropriate to inform and edu-  
21       cate the public of privacy rights and responsibilities.”.

22       SEC. 3. (a) REPEAL OF SECTION 6 OF THE PRIVACY  
23       ACT OF 1974.—Section 6 of the Privacy Act of 1974 is  
24       repealed.

1 (b) CONFORMING AMENDMENTS TO THE PRIVACY ACT  
2 OF 1974.—Section 552a of title 5, United States Code, is  
3 amended—

4 (1) by striking out “or” at the end of subsection  
5 (b)(11), by striking out the period at the end of subsec-  
6 tion (b)(12), and by inserting after such subsection the  
7 following:

8 “(13) to the Data Protection Board.”;

9 (2) by striking out the last sentence of subsection  
10 (f);

11 (3) by inserting “, the Data Protection Board,”  
12 after “to Congress” in subsection (o);

13 (4) by striking out subsection (p).

14 (c) CONFORMING AMENDMENTS TO TITLE 44, UNITED  
15 STATES CODE.—(1) Section 3503(f) of title 44, United  
16 States Code is amended—

17 (A) by striking out “The privacy functions” and  
18 inserting in lieu thereof “Subject to coordination by the  
19 Data Protection Board, the privacy functions”;

20 (B) by inserting “and” at the end of paragraph  
21 (1);

22 (C) by striking out “; and” at the end of para-  
23 graph (2) and inserting in lieu thereof a period; and

24 (D) by striking out paragraph (3).

25 (2) Section 3505(3) of such title is amended—

13

1 (A) by inserting "and" at the end of subparagraph  
2 (D);

3 (B) by striking out "; and" at the end of subpara-  
4 graph (E) and inserting in lieu thereof a period; and

5 (C) by striking out subparagraph (F).

6 (d) CONFORMING AMENDMENT TO EXECUTIVE SCHED-  
7 ULE.—Section 5314 of title 5, United States Code, is  
8 amended by adding at the end thereof the following new  
9 paragraph:

10 "Members, Data Protection Board (5).".

○